

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

SARA BUCHANAN,	)	
Plaintiff,	)	
	)	
vs.	)	4:03-cv-151-SEB-WGH
	)	
GOLDEN CASTING CORPORATION	)	
HOURLY HEALTH BENEFIT PLAN and	)	
GARY STAREWICZ, in his individual capacity as	)	
plan administrator,	)	
Defendants.	)	

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**Order Denying Golden Casting Corporation's Motion to Stay Action Pending Bankruptcy**

This case comes before the Court on Golden Casting Corporation's ("Golden Casting") Motion to Stay Pending Bankruptcy Plaintiff Sara Buchanan's ("Buchanan") claims for violations of the Employee Retirement Income Security Act of 1974 ("ERISA"), specifically for failure to provide timely notice of rights and for breach of fiduciary duty.<sup>1</sup> Golden Casting, having filed for Chapter 11 Bankruptcy, argues that all claims against it have been stayed automatically pursuant to 11 U.S.C. § 362 and that this cause should be closed administratively. In response, Buchanan argues that: (1) she has brought suit, not against Golden Casting, her former, bankrupt employer, but against Defendant Golden Casting Corporation Hourly Health Benefit Plan (the "Plan"), a separate legal entity under

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<sup>1</sup>Golden Casting filed a Notice of Bankruptcy Filing and Automatic Stay and Buchanan's response referred to the Notice as a Motion to Stay this Action Pending Bankruptcy. For the sake of clarity, we will refer to the Notice as Golden Casting's "Motion to Stay."

ERISA, and Defendant Gary Starewicz ("Starewicz"), the Plan's administrator; and (2) Golden Casting's bankruptcy does not shield the Plan or Starewicz from liability for ERISA violations. For the reasons set forth below, the Court DENIES Golden Casting's Motion to Stay.

### ***Facts and Procedural History***

Buchanan was employed by Golden Casting until she was laid off on May 6, 2003. Compl. ¶¶ 4, 10. Golden Casting, an employer engaged in interstate commerce within the meaning of ERISA Section 4(a), 29 U.S.C. § 1003(a), offered medical benefits to its employees under the Plan, a welfare benefit plan within the meaning of ERISA Section 3(1), 29 U.S.C. § 1002(1). Id. ¶¶ 3, 4. Buchanan was a participant in the Plan, and Golden Casting made contributions to the Plan on her behalf. Id. ¶¶ 4, 9. Starewicz was the Plan's designated administrator responsible for overall management of the Plan. Id. ¶¶ 6, 8.

On July 23, 2003, Buchanan filed a complaint against the Plan and Starewicz, in his individual capacity as plan administrator, (collectively the "Defendants") for allegedly failing to give Buchanan "written notice of her rights under the Consolidated Omnibus Reconciliation Act of 1984 ("COBRA") within 45 days after the lay off." Id. ¶ 11 (citing 29 U.S.C. § 1166). Buchanan alleges that because she did not receive notice of her COBRA rights from the Defendants until June 26, 2003, seven days after the 45-day limit, she personally paid medical expenses that might otherwise have been covered under COBRA. Id. ¶¶ 12-13. Buchanan brought a second claim against Starewicz for breach of fiduciary duty contending that he failed to provide timely COBRA notice and to take steps to enable the Plan to pay Buchanan's claims for benefits as they became due. Id. ¶ 16.

On May 14, 2003, prior to Buchanan bringing suit, Golden Casting filed for Chapter 11

Bankruptcy. Dfts.' Not. of Bank. Filing. Accordingly, all proceedings against Golden Casting were stayed pursuant to 11 U.S.C. § 362. Id. In response to this Court's August 12, 2003 order to show cause why this action should not also be stayed pending bankruptcy, Buchanan filed a Response opposing Golden Casting's Motion to Stay.

### ***Legal Analysis***

We have federal question jurisdiction over this case pursuant to ERISA Section 502(a), 29 U.S.C. § 1132(a), which provides, in pertinent part, as follows:

A civil action may be brought . . . (1) by a participant or beneficiary . . . (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan . . .

From Golden Casting's Notice of Bankruptcy Filing and Automatic Stay we infer the argument that Golden Casting's bankruptcy has effectively stayed Buchanan's claims against both the Plan and Starewicz. Buchanan, however, does not contend that Golden Casting is a proper party to a suit for ERISA benefits. Rather, she argues that she may bring suit against the Plan and Starewicz because ERISA allows an aggrieved plan beneficiary to bring suit against both her employee benefit plan and that plan's fiduciaries for failure to provide timely notice of COBRA rights and for breach of fiduciary duty and that Golden Casting's bankruptcy does not shield the Plan or Starewicz from liability because an employer's bankruptcy has no effect on a suit brought by an employee against the employee benefit plan and that plan's fiduciaries.

1. ***Ordinarily, the employee benefit plan and the plan's fiduciaries, not the employer, are proper defendants for ERISA claims***

Buchanan asserts that the Plan and Starewicz, not Golden Casting, are properly named

defendants to her claims of ERISA violations. As to Buchanan's claim against the Plan, ERISA Section 502(d) states that "[a]n employee benefit plan may sue or be sued under this subchapter as an entity" and that "[a]ny money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter." 29 U.S.C. § 1132(d).

The Seventh Circuit has not deviated from the plain language of Section 502(d), 29 U.S.C. § 1132(d); aggrieved employees, absent special circumstances not alleged here, should bring suit against their employee benefit plans, not their employers. See Jass v. Prudential Health Care Plan, Inc., 88 F.3d 1482, 1490 (7th Cir. 1996)("ERISA permits suits to recover benefits only against the plan as an entity"), quoting Gelardi v. Pertec Computer Corp., 761 F.2d 1323, 1324 (9th Cir. 1985); Riordan v. Commonwealth Edison Co., 128 F.3d 549, 551 (7th Cir. 1997)(citing Jass, 88 F.3d at 1490); Witowski v. Tetra Tech, Inc., 38 F. Supp. 2d 640, 644 (N.D. Ill. 1993)("the plan as an entity is the appropriate party to sue"); Chilcote v. Blue Cross & Blue Shield, 841 F. Supp. 877, 880 (E.D. Wis. 1993)("the employer is not a 'party' to a plan for purposes of suit, and . . . only the plan as an entity may be sued for benefits due under a plan"); Pecor v. Northwestern Nat. Ins. Co., 869 F. Supp. 651, 653 (E.D. Wis. 1994)(citing Chilcote, 841 F. Supp at 880).<sup>2</sup> Therefore, under ERISA, Buchanan properly named the Plan as a defendant to this suit under ERISA Section 502(d), 29 U.S.C. §

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<sup>2</sup> The Seventh Circuit has, however, allowed an ERISA case to proceed against an employer that acted as the plan administrator when the plan is also a defendant and the two are "closely intertwined." Mein v. Carus Corporation, 241 F.3d 581, 582-85 (7th Cir. 2001).

1132(d).

Having decided that the Plan was proper party to this suit, we turn to the question of whether Buchanan may bring suit for breach of fiduciary duty against Starewicz. ERISA Section 409(a) explains that "[a]ny person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach." 29 U.S.C. § 1109(a). ERISA Section 3(21) states that a fiduciary is a person who "exercises any discretionary authority or discretionary control respecting management of such plan" or "renders investment advice for a fee or other compensation" or "has any discretionary authority or discretionary responsibility in the administration of such plan." 29 U.S.C. § 1002 (21)(A).

Indeed, the Seventh Circuit has observed that claims may be brought against persons who are fiduciaries under ERISA for breach of their fiduciary duties. See Thornton v. Evans, 692 F.2d 1064, 1077 (7th Cir. 1982)(“The fiduciary duty standards imposed by ERISA . . . are enforceable in civil damage actions only against parties who are *fiduciaries* under the ERISA statute.”). Buchanan's complaint states that "Starewicz was responsible for the overall administration of the Health Benefit Plan, including the requirement to provide all notices required by ERISA." Compl. ¶ 6. Thus, Starewicz was a fiduciary of the Plan under Section 3(21) and may be sued in his capacity as plan administrator for breach of fiduciary duty under Section 409(a). See 29 U.S.C. §§ 1002(21)(A),

1109(a).<sup>3</sup>

2. *An automatic stay of suits against an employer during its bankruptcy does not affect claims against its employee benefit plan or the plan's fiduciaries*

Buchanan contends further that the automatic stay of claims against Golden Casting has no effect on her claims against the Plan or Starewicz. When an employer declares bankruptcy, it is protected by an automatic stay from prosecution unless the bankruptcy court expressly allows suit. 11 U.S.C. § 362. However, a stay of claims against the employer does not stay claims against the employee benefit plan. See Brengettys v. LTV Steel Hourly Pension Plan, 241 F.3d 609, 609 n.1 (7th Cir. 2001). In Brengettys, the plaintiff originally brought claims for violations of ERISA against both his employer, LTV Steel, and his employee benefit plans. See id. Although LTV Steel, the employer, was dismissed as a plaintiff under the protection of § 362 after filing for bankruptcy, LTV Steel's dismissal

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<sup>3</sup> Golden Casting has filed a subsequent, unsupported Motion to Transfer Proceedings to Bankruptcy Court contending that "[t]here is no legal entity known as the Golden Casting Corporation Hourly Benefit Plan" and that "[a]ny proposed claim against such Plan would be a claim against Golden Casting Corporation." Dft.'s Motion to Trans. Proc. to Bank. Ct. ¶ 2. Given the record as it currently stands, however, we decline to address whether a claim against Golden Casting Corporation is proper. Buchanan's complaint names Starewicz and "Golden Casting Corporation Hourly **Health Benefit Plan**" as defendants not "Golden Casting **Corporation**." Compl. In addition, both counts of the complaint allege failures to act on the part of Starewicz and the Plan not the Golden Casting **Corporation**. Compl. ¶¶ 7-15. Any money judgment against the Plan "shall be enforceable only against the plan as an entity and shall not be enforceable" against Golden Casting Corporation. See 29 U.S.C. § 1132(d)(2). As well, any money judgment against Starewicz in his individual capacity as the Plan's administrator is only enforceable against Starewicz. Therefore, Golden Casting Corporation is not directly exposed to liability under this suit.

Accordingly, pursuant to local rule, we will consider Golden Casting's Motion to Transfer upon further briefing by all parties on the issues of whether an entity known as Golden Casting Corporation Hourly Health Benefit Plan exists or existed at any time during Buchanan's employment with Golden Casting, whether such an entity was an employee welfare benefit plan subject to ERISA, and ultimately whether Buchanan's suit should be brought against Golden Casting Corporation and not the Plan or Starewicz.

did not effect the plaintiff's suit against his benefit plans and did not merit discussion beyond a footnote acknowledging the dismissal. See id. Employee benefit plans do not fall under the protection of a § 362 automatic stay because "an employer has no property interest in its employee benefit plans." See Divane v. A And C Electric Co., Inc., 193 B.R. 856, 860 (N.D. Ill. 1996).

Buchanan asserts that like the Plan, the stay of claims against Golden Casting has no effect on her claim against Starewicz. Similar to employee benefit plans, federal courts have found that individual plan fiduciaries are not protected from prosecution by a § 362 automatic stay of suits against the employer. See Leahy v. Trans Jones, Inc., 996 F.2d 136 (6th Cir. 1993); see also Ches v. Archer, 827 F. Supp. 159 (W.D.N.Y. 1993). In Leahy, the plaintiff brought suit against his former employer and the fiduciaries of his employee stock plan for refusing to grant him a lump sum distribution of retirement benefits upon his early retirement. Id. at 137. The employer filed notice of its Chapter 11 bankruptcy petition and requested an automatic stay under § 362. Id. The Sixth Circuit granted the stay and dismissed the employer but permitted the suit to continue against the individual fiduciaries of the stock plan. Id.

Like the employee benefit plan in Brengettys and like the fiduciaries in Leahy, Golden Casting's petition for bankruptcy has no effect on Buchanan's suit against the Plan and Starewicz. Golden Casting has no property interest in the Plan's assets or in Starewicz's personal funds that is protected by an automatic stay under § 362. Therefore, Golden Casting's Motion to Stay is DENIED.

### ***Conclusion***

Golden Casting Corporation has not been named a defendant to this suit and its bankruptcy does not shield either the Plan or Starewicz from liability in this matter. Accordingly, Golden Casting



Corporation's Motion to Stay this proceeding pursuant to 11 U.S.C. § 362 is DENIED. We reserve consideration of the issues raised in Golden Casting Corporation's related Motion to Transfer until that Motion is fully briefed and ripe for decision.

It is so ORDERED this \_\_\_\_\_ day of November 2003.

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SARAH EVANS BARKER, JUDGE  
United States District Court  
Southern District of Indiana

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